



Terms and Conditions

1. PRODUCT AND INSTALLATION SERVICES.

1.1. Product Purchases. Customer shall purchase from Performance Audio and Performance Audio shall deliver to Customer the products described in this proposal pursuant to the terms and conditions of this Agreement. Any additional products requested or ordered by Customer for this project after the date hereof shall be purchased by Customer pursuant to and subject to the terms and conditions of this Agreement as Products.

1.2. Installation Services. Customer has purchased certain Products from Performance Audio and hereby engages Performance Audio to perform the installation services as described in this proposal. Performance Audio agrees to perform the Installation Services in a professional and workmanlike manner in substantial compliance with the proposal and any written plans accepted by Performance Audio in writing. Performance Audio shall use its commercially reasonable efforts to provide the Installation Services according to the time schedule provided in the proposal.

1.3. Customer Product and Installation Specifications. For installations associated with new construction, a full set of plans must be provided prior to providing any Installation Services, Customer shall deliver to Performance Audio Customer's plans and specifications regarding all specified Products and Installation Services as well. For installations in existing structures, Customer shall provide plans and drawings at the request of Performance Audio but only to the extent such plans and drawings are available to Customer. All specifications shall be sufficiently complete, detailed and accurate to allow Performance Audio to effectively identify appropriate Products and provide the Installation Services. Customer acknowledges that these specifications and plans are relied upon by Performance Audio to provide the Products and Installation Services and their accuracy and completeness are essential to the success of the Installation Services and the function of the Products. Customer agrees to defend, indemnify and hold harmless Performance Audio for any loss or damage to the real property that may reasonably occur in provision of the Product and Installation Services in compliance with the specifications provided by Customer.

1.4. Modifications to Specifications. Any changes to the specifications by Customer ("Change Orders") shall be delivered to Performance Audio in writing and accepted by Performance Audio prior to the Delivery of any additional installation services or products not otherwise identified herein. If Change Orders are requested by Customer in writing and accepted by Performance Audio while the Installation Services are in process, Performance Audio will use its best efforts to implement the new or modified specifications and Customer agrees to pay any additional costs attributable to the Change Orders including but not limited to labor, materials, shipping costs and re-stocking fees as applicable.

In the event Customer or any of its representatives, agents or employees orally requests Performance Audio to provide additional installation services or products not otherwise identified herein, and in the event Performance Audio provides such orally requested installation services or products without requiring a written Change Order, Customer agrees to be bound by such requests and to pay for any charges, invoices or other costs associated with any oral request(s) for installation services or products which are provided by Performance Audio in response to an oral request by Customer. Unless Customer identifies its authorized agents in writing, Customer agrees that any employee, contractor or agent of Customer may request Change Orders and orally request changes to the scope of Installation Services and add products in addition to those specified herein and Customer agrees to pay for all such modifications.

In the event Performance Audio chooses to provide Installation Services and/or Products in response to an oral request by Customer, that decision may not be construed as a general waiver of any requirements set for herein or any right of Performance Audio thereafter to exercise its right to require written Change Orders for future change order requests by Customer.

1.5. Permits or Authorizations. Customer agrees to apply for and obtain all required permits, if any, and pay all fees and assessments associated therewith.

1.6. Subcontractors. Performance Audio may engage subcontractors to perform the Installation Services, provided that Performance Audio will continue to be responsible for performing all Installation Services pursuant to this Agreement. All work for which licenses are required shall be performed by insured, licensed (where a license is required) and authorized subcontractors and Performance Audio and its subcontractors will maintain valid and appropriate workers compensation coverage.

2. DESIGN SERVICES.

- 2.1. **Errors in Design.** Performance Audio may provide un-paid design services which include equipment specification, connectivity drawings, floor plan layouts, and other design related materials. Customer acknowledges and agrees that these design services are provided as a best effort to meet the needs of the Customer and to hold harmless Performance Audio for any such errors in design.
- 2.2. **Functionality of Design.** The Customer is responsible to understand the scope of work, drawings, and other design related materials. Customer is also responsible to ensure the design has address all of their expectations pertaining to the specified project.
- 2.3. **Resolution of Design Discrepancies.** Upon receipt of written notification, Performance Audio will work through design modifications with the Customer including possible exchange of equipment and/or additional labor. Design discrepancies are to be handles as a Change Order as defined in this agreement.

3. SITE CONDITIONS.

- 3.1. **Hours of Access.** Customer shall provide Performance Audio with access to the worksite between the hours of 8am and 8pm Monday through Friday unless otherwise specified. Any restrictions to these hours must be specified by the Customer in writing prior to the beginning of the installation service. Customer agrees to pay for any additional trip charges, and hold Performance Audio harmless for any project completion delays that may result from such limited site access.
- 3.2. **Other Trades.** Performance Audio understands projects are sometimes delayed and will work with and around other trades as possible. Customer agrees to the time requirements as set out in this proposal and agrees to pay overtime costs if sufficient time is not provided and Customer does not extend the project completion date. Delays due to site conditions not being ready for Performance Audio's installation service may result in project completion deadlines not being met. The Customer will hold harmless Performance Audio for any such delays and agrees additional travel-related costs including but not limited to lodging, mileage, travel time, per diem, etc... will be added to the final invoice.
- 3.3. **Climate Controls.** If the jobsite has climate controls, the Customer shall ensure climate control is active during the installation service.
- 3.4. **Parking.** Performance Audio requires parking within 300' of the nearest building entrance of the jobsite for one work truck requiring 9' vertical clearance and parking for other vehicles as necessary. The Customer agrees to notify Performance Audio of any parking restrictions prior to the installation service. Parking costs and additional labor charges Performance Audio incurs due to parking limitations are agreed to be paid in full by the Customer as additional costs and expenses.
- 3.5. **Facilities.** Customer agrees to provide on-site 120VAC power sufficient for operating tools and other equipment as necessary and on-site restroom facilities for use by Performance Audio staff as needed.
- 3.6. **Customer/Owner Furnished Equipment.** Customer furnished equipment must be made available to Performance Audio for pre-testing and on-site for installation at agreed upon times. Customer agrees to indemnify, defend and hold harmless Performance Audio for any delays, injuries, failures or other problems caused by owner furnished equipment. Performance Audio does not warrant owner furnished equipment. Time and materials Performance Audio is required to expend troubleshooting, repairing, shipping, and replacing any defective owner furnished equipment are agreed to be paid at standard rates by the Customer as additional costs and expenses.

4. CUSTOMER PAYMENTS.

- 4.1. **Product and Installation Price.** Customer shall pay to Performance Audio in consideration of the Products and all Installation Services the total price as set forth in this proposal, together with payment for any and all Change Orders or other charges described herein (the "Installation Price"). Unless otherwise set forth in the Payment Schedule, the Customer shall pay Performance Audio 50% of the installation price prior to ordering equipment and the remaining 50% of the Installation Price, all Change Orders, and other charges upon substantial completion of the Installation Service.
- 4.2. **Interest and Re-stocking fees.** Customer agrees to pay interest at the rate of 1.5% per month compounded monthly on all past due amounts Customer is obligated to pay in accordance with this Agreement. In the event Customer returns or rejects Products specified in this Agreement, Customer agrees to pay a re-stocking fee of at least 15% on all unopened new Products and at least 25% on all opened products. Performance Audio is not obligated to accept any returns and retains sole and exclusive discretion to accept returns. There will be no refunds of any charges for Installation Services regardless of whether or not the Installation Services are related to returned or rejected Products.

4.3. Change Orders. The Customer and Performance Audio may mutually agree during this Agreement to modify the Installation Services as described above. Customer agrees to pay the costs associated with any and all Change Orders, as reasonably determined by Performance Audio. 50% of fees for Change Orders shall be paid in advance by Customer where timing allows and the remaining balance due upon substantial completion or as invoiced by Performance Audio if so agreed to by the parties.

4.4. Concealed or Unknown Conditions. Customer acknowledges and agrees that additional products and/or labor may be necessary to complete the Installation Services due to concealed or unknown conditions, including but not limited to broken conduit, cable path limitations, inaccessible areas, existence of asbestos, etc... due to concealed or unknown site conditions. Performance Audio will notify Customer in writing of any and all concealed or unknown conditions upon discovery and recommend a course of action to complete installation service. Products not able to be installed due to concealed or unknown conditions will be subject to interest and restocking fees.

4.5. Taxes. All payments under this Agreement are exclusive of all use and/or any other taxes or duties (collectively, "Taxes"). Customer is responsible for all Taxes due and paid in connection with product sales or services provided as part of the Installation Services pursuant to this Agreement, and the transactions contemplated hereby. Customer shall promptly reimburse Performance Audio for any and all Taxes that Performance Audio may be required to pay in connection with this Agreement, or the transactions contemplated hereby, except for Taxes payable on Performance Audio's net income. Upon request, each Party will provide the other Party with written documentation, including but not limited to copies of receipts, of any and all Taxes paid in connection with this Agreement. If Customer contends that it is exempt from the payment of any Taxes, Customer will supply Performance Audio with appropriate tax exemption certificates and/or other appropriate documentation in a form satisfactory to Performance Audio prior to implementation.

4.6. Late Payments. All payments by customer are due as set forth herein, on the invoice or within 30 days of the invoice date if no due date is specified, whichever is sooner. Any amounts not timely paid shall accrue interest at the rate of 1.5% per month (18% per annum), compounded monthly until paid.

4.7. Lien Rights. Customer acknowledges and agrees that pursuant to Utah law some or all of the Installation Services may grant to Performance Audio certain lien rights in the real property at which the Installation Services are provided. Customer accepts this Agreement as preliminary notice of Performance Audio's lien rights, and agrees that, in the event of non-payment or partial payment by Customer, Performance Audio may file and record a mechanics' lien on the real property where the Installation Services are provided. To the extent this Agreement involves work on governmental or municipal projects or public buildings which are subject to performance bonds, Customer shall and hereby agrees to provide a complete copy of the performance bond and any related insurance policies to Performance Audio prior to commencement of Performance Audio's work.

4.8. Security Interest and UCC-1 Filing. Customer grants to Performance Audio a purchase money security interest in and to the Products to secure payment for all charges set forth in in this proposal. Customer hereby authorizes Performance Audio to file a UCC-1 Financing Statement covering the Products as collateral to secure payment for all charges for which Customer is responsible under the terms of this Agreement. The UCC-1 Financing Statement may list Customer and any Guarantor as the debtor and all of the Products as collateral.

5. TERM AND TERMINATION.

5.1. Term. This Agreement commences on the Effective Date above and shall continue until completion of the Installation Services and payment by Customer hereunder, or until otherwise terminated as provided for herein.

5.2. Voluntary Termination. Either Party may terminate this Agreement for any reason (or no reason) by providing written notice to the other Party at any time.

5.3. Payment for Installation Services on Termination. Termination of this Agreement shall not in any way relieve Customer from its obligation to pay for all Product and Installation Services delivered by Performance Audio or in-process at the time of termination and ultimately delivered to Customer by Performance Audio. Payment for Customer Products delivered by Performance Audio after termination shall be under the same terms as otherwise set forth herein.

6. DISCLAIMER OF WARRANTIES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT, PERFORMANCE AUDIO SPECIFICALLY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, BY OPERATION OF THE LAW, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE INSTALLATION SERVICES.

7. GENERAL.

- 7.1. Relationship. No Third-Party Beneficiaries.** This Agreement does not create any partnership, agency, employment, or joint venture relationship and neither Party has authority to create any obligation on behalf of the other. The Parties do not intend, nor shall any clause be interpreted, to create under this Agreement any obligations, benefits or rights to or from any third party.
- 7.2. Assignments.** Without limiting Performance Audio's right to subcontract as provided for herein, this Agreement may not be assigned without the other Party's prior written consent.
- 7.3. Severability.** If any provision of this Agreement is held to be inconsistent with any present or future law, ruling, rule or regulation of any court or governmental authority, such provision shall be deemed to be rescinded or modified to the minimum extent necessary to comply with such law, ruling, rule or regulation, and the remainder of this Agreement shall not be affected thereby.
- 7.4. Entire Agreement.** This Agreement constitutes the complete and entire agreement of the Parties and supersedes all previous and contemporaneous agreements, oral or written, and all other communications relating to the subject matter hereof. This Agreement may be modified only in a writing signed by both Parties' authorized representatives. All Schedules attached hereto are incorporated herein.
- 7.5. Force Majeure.** If either Party is prevented from fulfilling its obligations under this Agreement by reason of any event beyond its reasonable control, that Party will promptly give written notice of this to the other Party and will make commercially reasonable efforts to resume its performance.
- 7.6. Governing Law.** This Agreement is governed by the laws of the State of Utah, without regard to its conflicts of laws principles. The Parties submit to the non-exclusive personal jurisdiction and venue of the federal and state courts located in or having jurisdiction over Salt Lake County, Utah.
- 7.7. Attorneys' Fees and Costs.** If either Party breaches this Agreement, the non-breaching Party shall be entitled to recover from the breaching Party all of the non-breaching Party's costs, including without limitation attorneys' fees, incurred by the non-breaching Party in enforcing the terms of this Agreement or in collecting any amounts due hereunder.
- 7.8. Waiver.** No failure to exercise, or delay in exercising any right under or arising out of this Agreement shall operate as a waiver, except as provided herein, nor shall any single or partial exercise of any such right preclude the exercise of any other right.
- 7.9. Counterparts.** This Agreement may be executed in a number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
- 7.10. Survival.** The Parties agree that where the context of any provision indicates the intent that it shall survive the Term or termination of this Agreement, then it shall survive the same.
- 7.11. Notices.** All notices which may be given in connection with this Agreement shall be sent by either Party to the other Party at the addresses below by U.S. Certified Mail, return receipt requested, or by tracked overnight courier service, or confirmed electronic mail receipt.